



Commonwealth  
of Massachusetts

## *OCPF Online*

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*Office of Campaign and Political Finance  
One Ashburton Place, Room 411  
Boston, MA 02108*

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### Advisory Opinion

November 13, 2001  
AO-01-30

Sarah Cannon Holden  
P.O. Box 6202  
Lincoln, MA 01773

Re: Receipt of cash contributions

Dear Ms. Holden:

This letter is in response to your October 17, 2001 request for guidance.

You are receiving qualifying contributions in accordance with the Clean Elections law, M.G.L. c. 55A.<sup>1</sup> A qualifying contribution is an allowable contribution of \$5 to \$100 made to a participant during the qualifying period from a registered voter, which is accompanied by a statement signed by the contributor indicating that he or she wishes the recipient to be eligible for public funds. In addition, no person may make or give a payment, gift or anything of value in exchange for a qualifying contribution.

Some of the qualifying contributions received on your behalf are made in cash. You have stated that some of those who collect the qualifying contributions have expressed concern for the security of sending cash in the mail.

#### **QUESTION**

May those who collect qualifying contributions obtain a bank check for the cash they collect and send the check to your political committee along with Qualifying Contribution forms (Form CE-2) for each contributor?

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<sup>1</sup> That statute provides that before becoming eligible to receive clean election funds candidates must raise at least the minimum number of qualifying contributions specified in the statute. See M.G.L. c. 55A, §§ 3 and 4 and 970 CMR 5.08.

## **RESPONSE**

Qualifying contributions may be collected and then sent to your committee in the form of a bank check, but only if (1) the amount of a cash contribution, when added to any other contribution made by a contributor during a calendar year, does not exceed \$50.00 and (2) those collecting the contributions provide information to the committee reflecting the name and residential address of all contributors and the amount of each individual contribution.

Qualifying contributions that are \$50 or less, when considered with other contributions from the same person during a calendar year, may be received in the form of cash. See M.G.L. c. 55, § 9, which states in relevant part:

No individual, candidate or political committee, or person acting on behalf of said individual, candidate, or political committee, shall accept a contribution of money from any one person or political committee **if the aggregate amount contributed in a calendar year exceeds \$50 except by a written instrument** or by direct deposit in accordance with section nine A.<sup>2</sup> For the purposes of the preceding sentence the word “check” shall mean a check on which the contributor is directly liable or which is written on a personal, escrow, trust, partnership, business or other account which represents or contains the contributor's funds. The term “written instrument” shall also mean for contributions by credit card, a paper record signed by the cardholder or, in the case of such contribution made over the Internet, an electronic record created and transmitted by the cardholder. The term “written instrument” shall not mean a certified check, cashier’s check, treasurer’s check, money order, traveler’s check or other similar negotiable instrument.  
[Emphasis added].

To comply with section 9 persons who receive contributions on your behalf must ensure that if the amount received, together with other contributions previously received from a contributor, exceeds \$50, that the contribution is received by written instrument. If the contribution does not have to be made by written instrument it may be made by cash. That cash combined with other cash contributions may be forwarded to your committee in the form of a certified check or similar negotiable instrument. The aggregate amount forwarded is not in itself a contribution subject to the restrictions of section 9.

In addition to complying with section 9, those who collect contributions on your behalf need to be careful to keep records of all contributions received, *regardless of amount*. The records that must be maintained and transmitted to your committee include the name and residential address of all contributors and the date and amount of each contribution. See M.G.L. c. 55, §§ 2 and 10. This information needs to be provided to your political committee with the certified check or other negotiable instrument used to transmit the funds raised. Your committee needs this information to ensure compliance with several provisions of the campaign finance law and Clean Elections law, including the \$100 aggregate limit on contributions that a Clean Elections participant may receive from any individual during an election cycle. See M.G.L. c. 55A, § 1 (definition of “allowable contribution.”)

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<sup>2</sup> Section 9A allows PACs to accept contributions by direct deposit.

Section 19(b) of chapter 55 states that contributions received by depository candidates<sup>3</sup> must be deposited within seven days after receipt. Where a person has received contributions on behalf of your political committee, the deposit must be made in your committee's account within seven days.

Section 19(b) also states that the deposit must be "in the form received." This requirement exists because disclosure of income under the depository reporting system is not made by candidates or committees, but by bank officials based on the deposits made by the candidates or committees. Requiring contributions to be deposited "in the form received" provides a mechanism that facilitates the tracing of funds to their original source and ensures that the committee has complied with M.G.L. c. 55, §§ 9 and 10.

The "in the form received" requirement should not be read in isolation from section 9, which specifies that contributions in the amount of \$50 or less do not have to be made by "written instrument" and may be made by other forms of payment, such as cash, money order, cashier's check or bank check. These forms of payment do not generally provide the necessary contributor information and section 19(b) should not be construed to require deposit of such contributions in their original form. The purposes underlying § 19(b) are satisfied where, as you have proposed, persons raising money for a depository committee exchange cash contributions of \$50 or less for a cashier's check prior to depositing the funds in the committee's account and also provide the necessary contributor information to the committee.

Please note that this opinion is issued on the basis of your letter and solely within the context of M.G.L. c. 55 and c. 55A.<sup>4</sup> I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in dark ink, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan  
Director

MJS:gb

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<sup>3</sup>"Depository" candidates are candidates for statewide, county, Governor's Council and city-wide municipal offices other than school committee in Boston, Lowell, Springfield, Worcester and Cambridge.

<sup>4</sup> Although you have asked your question in the context of qualifying contributions received in accordance with the Clean Elections Law, the conclusion reached in this opinion applies equally to the receipt of cash contributions by candidates who are not participating in the Clean Elections program.